

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RALPH W. MCCLAIN, JR.,  
Plaintiff

v.

DR. KALE, M.D., *et al.*,  
Defendants

CIVIL NO. 1:10-CV-35

*O R D E R*

The background of this order is as follows:

Presently before us is Magistrate Judge Smyser's Report and Recommendation ("R&R") (Doc. 76), wherein Judge Smyser recommends that we deny Defendants' pending motions for summary judgment (Docs. 53, 63) in part, but grant summary judgment as to a claim that Defendant Wilkes stole and/or ate cookies that Plaintiff had purchased from the commissary. Also before us are Plaintiff's objections to the R&R (Doc. 78), Defendants' brief in opposition to Plaintiff's objections (Doc. 80), and Plaintiff's reply brief (Doc. 86).

Plaintiff objects only to the recommendation that summary judgment be entered against him, and in favor of Defendant Wilkes, on Plaintiff's claim that Wilkes stole and/or ate his cookies. Neither party objects to the denial of summary judgment as to the other claims and Defendants in this case. We will therefore adopt the latter recommendation without further discussion, as we find no error in it.

We now turn to the former recommendation—specifically, the recommendation that we grant summary judgment on the claim concerning Plaintiff's cookies, on the basis that Plaintiff procedurally defaulted this claim. Upon independent review of the record, we agree with Judge Smyser's conclusion that Plaintiff failed to exhaust this claim by failing to identify Wilkes in his grievance.

Accordingly, we will adopt his recommendation of granting summary judgment in favor of Wilkes, and against Plaintiff, on this claim.

ACCORDINGLY, this 14th day of June, 2012, it is ORDERED as follows:

1. The R&R (Doc. 76) is approved.
2. Pursuant to Magistrate Judge Smyser's recommendation, Defendants' motions for summary judgment (Docs. 53, 63) are granted in part and denied in part as follows:
  - a. The corrections defendants' motion (Doc. 53) is granted insofar as it seeks summary judgment on Plaintiff's claim that Defendant Wilkes allegedly stole and/or ate Plaintiff's cookies.
  - b. The motions are denied in all other respects.
3. The case is remanded to Judge Smyser for further proceedings, including an R&R on dispositive motions.

/s/ William W. Caldwell  
William W. Caldwell  
United States District Judge